

3 June 1975

MEMORANDUM FOR:

Chief, DDI Executive Staff

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SUBJECT: Draft Bill on Security Classification

1. This memorandum is in response to your memorandum of 21 May requesting comments on certain aspects of a draft bill concerning "classification and declassification of official information in the interest of national defense."

2. First of all, I would note that in my opinion the subject draft is very poorly written, in fact so poorly that in some places it is difficult or even impossible to tell exactly what is intended. Needless to say, this complicates the task of addressing the specific question which the OLC has asked us to address.

3. In my comments below I go a bit beyond the specific matters mentioned in your memorandum. You may of course ignore the added points; but possibly there may be an item or two which you will wish to consider mentioning.

4. With regard to the feasibility and workability of the provisions of subsection (c)(4) of the draft (pp. 8-12): Much of this subsection does not appear to differ greatly from what is now on the books. In general at least the provisions appear workable.

a. In fact, subsection (c)(4)(F) would seem to provide a great deal of flexibility--though I am not at all sure how far one could take the distinction between "classifying" and "placing identification markings on material...to indicate the category of classification." A very large percentage of classified DDI documents are classified because they contain material drawn from, or are based on material contained in, documents classified by others; the draft would seem to allow these DDI documents to be "marked" rather than "classified." (It may be noted that the draft's later provisions on declassification provide for "declassifying" but not for "demarking.")

b. Subsection (c)(4)(G) provides for punishment of those who violate the provisions of (c)(4). My copy does not have the opening words of (c)(4)(G), but the words I have suggest the possibility of punishment without trial/hearing and without right of appeal.

- c. Subsection (c)(4)(B) calls for compilation and maintenance, "except as otherwise provided by statute," of lists of names of those authorized to classify; and then submission of these lists to those specified upon their request. As drafted, the words "except as otherwise provided by statute" do not pertain to the sentence providing for the provision of the lists to those specified in the subsection. This could pose a problem.

5. With regard to the adequacy of the criteria for classification for the protection of DDI material (pp. 12-27): In my opinion, the criteria in subsection (d) are not an adequate guide for classification, and I doubt that they (especially in conjunction with the later provisions on declassification) would adequately protect intelligence information.

- a. The language of this part of the draft is too imprecise. The introductory part of subsection (d) says the use of classification authority will be "strictly limited" by the criteria given, but the criteria given are not precise enough to be "strictly" applied. The phrase "specific details" is used frequently throughout this subsection, but it is not defined, and yet obviously it can be interpreted in many ways.
- b. "Intelligence sources and methods" is mentioned explicitly only in subsection (d)(1)(D) among criteria for Top Secret classification, and there with this phrasing: "...contains specific details concerning intelligence gathering operations of the United States, including...intelligence sources and methods, including the identity of persons engaged in covert activities abroad on behalf of the United States." The language here is not clear to me. Do the words mean that "specific details" of "intelligence sources and methods" must include "the identity of persons engaged..." in order to qualify for a classification here?
- c. Subsection (d)(1)(F) refers to "information required by other statutes to be protected." The drafters may in fact have deliberately used the phraseology as given here. In any case, I would at least question the adequacy of the language from the Agency's point of view. I note that some statutes (e.g., CIA act, section 6; NSA act) permit certain information to be withheld, but do not "require" the withholding of it.
- d. Subsection (d)(4) covers material furnished by foreign governments, international organizations, etc. This section

seems to be basically all right, except for the important fact that anything classified less than Top Secret would, so far as I can make out from the later parts of the draft, be subject to automatic declassification. This clearly poses problems for the handling of foreign liaison material and certain other materials.

6. With regard to the adequacy of subsection (e) to protect DDI material: This subsection does not appear to me to be adequate.

- a. Subsection (e)(8) seems to be saying that Top Secret material would be automatically downgraded provided it is determined that it contains Top Secret material; presumably it is intended to say that Top Secret material will not be subject to automatic declassification if an authorized person says it contains material still covered by the Top Secret criteria.
- b. In any case the draft appears to say that only Top Secret material would be protected from automatic downgrading. If that is what is meant, then surely the Top Secret classification would become, I imagine, the equivalent of the present Secret.
- c. The procedures called for in subsection (e)(9) could hardly fail to become burdensome, perhaps truly unworkable--unless perhaps the drafters of the bill really mean that there are not many things at all that should be withheld, or unless it is assumed that in fact it would come about that the provisions would in large part be "observed in the breach."

7. My comments above are to some extent conditioned by my understanding of intelligence and classification and control in the world of government in which I work. This of course affects my views on what is workable and what is adequate. As I have already indicated in my paragraph 6.c above, it is possible that the drafters are taking a greatly different perspective. Even if that is so, however, I think they have underestimated the problem.

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